



## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Part 418**

**[Docket No. SSA-2021-0006]**

**RIN 0960-AI55**

### **Addressing Certain Types of Fraud Affecting Medicare Income Related Monthly Adjusted Amounts (IRMAA)**

**AGENCY:** Social Security Administration.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** Certain Medicare beneficiaries may have their taxable income affected by fraudulent activity, which in turn could affect the amount of and their ability to afford their Medicare Part B (medical insurance) and Medicare Part D (prescription drug coverage) premiums. We are seeking information from the public on the type of information we should consider relating to evidence of life changing events (LCE) resulting from criminal fraud or theft. Information from the public will help us determine whether and how we should revise our rules to provide relief to beneficiaries affected by fraud.

**DATES:** To be sure that we consider your comments, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by any one of three methods – Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2021-0006 so that we may associate your comments with the ANPRM.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers, financial account numbers, or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the Search function to find docket number SSA-2021-0006. Once you submit your comment, the system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966-2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Monica Nolan, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-2075. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at [www.socialsecurity.gov](http://www.socialsecurity.gov).

**SUPPLEMENTARY INFORMATION:**

Background:

Medicare Part B as set forth in Title XVIII, Part B of the Social Security Act (Act)<sup>1</sup> and explained in 42 CFR part 407, is a voluntary supplemental medical insurance program that provides coverage for services such as physician's care, diagnostic services, and medical supplies. Medicare Part D established by Title XVIII of the Act, Part D<sup>2</sup> and explained in 42 CFR part 423 is a voluntary program that covers certain prescription drug costs.

Many beneficiaries enrolled in Part B and Part D pay deductibles, co-insurances associated with covered services, and monthly premiums. The Part B and Part D premiums are periodic payments that an enrolled beneficiary makes to Medicare or a participating health care or prescription drug plan in exchange for medical insurance and prescription drug cost coverage.<sup>3</sup> The Federal Government subsidizes the Part B and Part D programs, and most enrollees pay a monthly premium representing about roughly 25 percent of the estimated actual cost for Part B and the cost of basic prescription drug coverage for Part D.<sup>4</sup> The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program and sets the standard and base monthly premiums. The Social Security Administration in turn determines and deducts the amount of certain Part B and Part D premiums from beneficiaries' Social Security benefits.

Beneficiaries with modified adjusted gross incomes (MAGI)<sup>5</sup> above a specified threshold<sup>6</sup> must pay a higher percentage of the Medicare Part B and Part D costs based on where their MAGI falls within certain income ranges.<sup>7</sup> CMS sets and publishes all MAGI threshold and range amounts each year based on changes in the Consumer Price

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<sup>1</sup> See 42 U.S.C. 1395j.

<sup>2</sup> See 42 U.S.C. 1395w-101.

<sup>3</sup> See 20 CFR 418.1010(b)(9), 418.2010(b)(7), and 42 CFR 408.20 through 408.28.

<sup>4</sup> See 42 U.S.C. 1395r(a), 1395w-115(a).

<sup>5</sup> *Modified Adjusted Gross Income* is your adjusted gross income as defined by the Internal Revenue Code, plus certain forms of tax-exempt income set out in the regulations. See 20 CFR 418.1010(b)(6) and 418.2010(b)(6).

<sup>6</sup> See 20 CFR 418.1105 and 418.2105

<sup>7</sup> See 20 CFR 418.1115 and 418.2115

Index.<sup>8</sup> We refer to this subsidy reduction as the Income Related Monthly Adjustment Amount (IRMAA), which is the amount of additional premiums these beneficiaries must pay based on their income.<sup>9</sup>

The Internal Revenue Service (IRS) provides us with MAGI information each year. We use an individual's MAGI and Federal income tax filing status for the tax year two years before the *effective year* – the calendar year for which we make an IRMAA determination<sup>10</sup> – to determine whether a beneficiary must pay an IRMAA, and if so, how much.<sup>11</sup> If information is not yet available for the tax year two years before the effective year, we will use information from the tax year three years before the effective year until the later information becomes available to us.<sup>12</sup>

As an example, we would use 2019 MAGI and Federal income tax filing status information when making a determination for a beneficiary who must pay an IRMAA beginning in January 2021 (2021 being the effective year). This is because we use the most current tax data available from the IRS, which is usually two years before the effective year. The determination is generally made prior to the effective year, and thus tax data from the prior year (2020 in this example) will generally not be available to the Social Security Administration (SSA) at the time of the determination. Consequently, we must use the latest tax data available to us to make an IRMAA determination.

Beneficiaries who experience a major life-changing event may request that we use information from a more recent tax year to make a new IRMAA determination by completing an SSA-44 (Office of Management and Budget (OMB) No. 0960-0784).<sup>13</sup> Major life-changing events include marriage, divorce or annulment, death of a spouse, work reduction or stoppage, loss of income-producing property, loss of employer pension

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<sup>8</sup> See 20 CFR 418.1105(c), 418.1115(e), 418.2105(c), and 418.2115(e).

<sup>9</sup> See 20 CFR 418.1101 and 418.2101

<sup>10</sup> See 20 CFR 418.1010(b)(2) and 418.2010(b)(2)

<sup>11</sup> See 20 CFR 418.1120 and 418.2120

<sup>12</sup> See 20 CFR 418.1135(b) and 418.2135

<sup>13</sup> See 20 CFR 418.1201, 418.1205, 418.2201, and 418.2205

or receipt of settlement payment from a current or former employer.<sup>14</sup> If a beneficiary provides evidence that a qualifying major life-changing event caused a significant reduction in MAGI, we will determine the IRMAA based on data from a more recent tax year.<sup>15</sup> During the annual verification process, SSA will verify MAGI for beneficiaries for whom SSA has been temporarily using MAGI from the tax year 3 years prior to the effective year, beneficiaries whom we are using a copy of their 2 years prior or 1 year prior to the effective year tax return, beneficiaries who supplied estimates for their MAGI in connection with a life changing event, and for beneficiaries who attested to not needing to file a tax return.<sup>16</sup> We define a significant reduction in MAGI as any change that results in a reduction or elimination of IRMAA.<sup>17</sup>

Increase in fraudulent activities:

Fraud impacts a greater number of Americans each year and to a greater economic extent. The Federal Trade Commission (FTC) reported receiving more than 2.2 million reports of fraud from consumers, who reported losses of more than \$3.3 billion in 2020 (an increase from \$1.8 billion in 2019). Just over a third of all consumers who filed a fraud report with the FTC – 34 percent – reported losing money, up from 23 percent in 2019.<sup>18</sup> For example, among the increasing reports of fraud, the FTC cites imposter fraud as the number one category of fraud by loss amount.<sup>19</sup> The “imposter fraud” category includes “. . . romance scams, people falsely claiming to be the government, a relative in distress, a well-known business, or a technical support expert, to get a consumer’s money.”<sup>20</sup> Additionally, as the COVID-19 pandemic continues to

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<sup>14</sup> See 42 U.S.C. 1395r (i)(4)(C)(ii)(II); 20 CFR 418.1205, and 418.2205

<sup>15</sup> See 20 CFR 418.1201; 418.1205, 418.2201, and 418.2205

<sup>16</sup> See 20 CFR 418.1140 and HI 01130.001

<sup>17</sup> See 20 CFR 418.1215 and 418.2215

<sup>18</sup> Id.

<sup>19</sup> The Federal Trade Commission’s *Consumer Sentinel Network: Data Book 2020*, page 8, available at: [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn\\_annual\\_data\\_book\\_2020.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf)

<sup>20</sup> Id. at page 4.

impact the United States, the Federal Communications Commission has learned of new scam text-message campaigns and robocalls that prey on virus-related fears,<sup>21</sup> and the FTC has warned against scammers attempting to cash in on confusion relating to COVID-19 vaccines.<sup>22</sup>

In addition to the above noted new and increased types of fraud, we have also become aware of a significant increase in Social Security number (SSN)-related fraud, and scammers who pose as government employees to defraud unsuspecting victims of their personal information and money.<sup>23</sup> In January 2020, our Inspector General appeared before Congress to address this matter. The Inspector General gave testimony about a significant increase in complaints of callers impersonating Social Security employees or alleging an SSN-related problem. She noted that, in fiscal year (FY) 2018, our Office of the Inspector General (SSA OIG) recorded about 15,000 related complaints, while in FY 2019, the number of such complaints grew to over 478,000.<sup>24</sup> For FY 2020, SSA OIG recorded over 718,000 complaints related to Social Security telephone scams,<sup>25</sup> and in its most recent semiannual report to Congress (for the period of October 1, 2020 through March 31, 2021), SSA OIG reports having received more than 400,000 such complaints during that 6-month period, which would exceed the rate for FY 2020.<sup>26</sup> The FTC reports that Social Security-related phone scams are the most common type of

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<sup>21</sup> *Coronavirus Scams – Consumer Resources* <https://www.fcc.gov/covid-scams>

<sup>22</sup> Scammers cash in on COVID-19 vaccination confusion (January 27, 2021) available at: <https://www.consumer.ftc.gov/blog/2021/01/scammers-cash-covid-19-vaccination-confusion>

<sup>23</sup> *That's Not the Government Calling: Protecting Seniors from the Social Security Impersonation Scam: Hearing Before the Special Committee on Aging*, U.S. Senate, 116<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2020) (Statement of Gail S. Ennis, Inspector General, Social Security Administration) (<https://oig.ssa.gov/newsroom/congressional-testimony/thats-not-government-calling-protecting-seniors-social-security>).

<sup>24</sup> *Id.* at 2 and Exhibit 1.

<sup>25</sup> SSA OIG, *Semiannual Report to Congress, October 1, 2019 – March, 31, 2020*, at 10 (May 29, 2020) (<https://oig.ssa.gov/sites/default/files/semiannual/SAR-Spring-2020.pdf>); SSA OIG *Semiannual Report to Congress, April 1, 2020 – September 30, 2020*, at 11 (November 23, 2020) ([https://oig.ssa.gov/sites/default/files/Fall\\_2020\\_SAR\\_1.pdf](https://oig.ssa.gov/sites/default/files/Fall_2020_SAR_1.pdf)).

<sup>26</sup> SSA OIG, *Semiannual Report to Congress, October 1, 2020 -March 31, 2021*, at 12 (May 28, 2021) [SPRING 2021 SAR\\_FINAL\\_0.pdf](https://oig.ssa.gov/sites/default/files/SPRING_2021_SAR_FINAL_0.pdf) (ssa.gov)

government imposter fraud targeting the public.<sup>27</sup> Recently, the U.S. Attorney’s Office for the Northern District of Georgia helped shut down a criminal ring that defrauded the public of over \$20 million by impersonating Social Security or IRS employees.<sup>28</sup> We note, however, that Social Security impersonation scams are only one among many types of fraud that could result in income changes that ultimately affect IRMAA amounts.

During the January 2020 congressional hearing, the Inspector General testified that scammers typically “spoof” or mimic legitimate government telephone numbers, so those numbers appear on a victim’s caller ID, providing a veil of legitimacy. Scammers seek to deceive and frighten victims by telling them that their SSNs have been linked to crimes, or that their accounts are subject to a fine or debt which the number holder needs to pay to receive or continue to receive their Social Security benefits, or avoid legal action, including arrest. Some scammers have even emailed fake letters and reports that appear to come from Social Security, to further intimidate and convince potential victims of their legitimacy. The scammers then demand payment in the form of cash, retail gift cards, or pre-paid debit cards, wire transfers, or digital currency, all of which are difficult for authorities to trace.<sup>29</sup>

Scams, regardless of whether they involve impersonation of SSA employees, may severely harm our beneficiaries in numerous ways, including with respect to our determinations regarding IRMAA. For example, a beneficiary may be defrauded out of a significant amount of money. In addition to losing money, the victim may engage in financial transactions to pay scammers—such as withdrawing funds from tax-advantaged

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<sup>27</sup> Federal Trade Commission: Consumer Protection Data Spotlight, available at: <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/07/government-imposter-scams-top-list-reported-frauds>.

<sup>28</sup> SSA OIG *India-Based VOIP Provider and Its Director Indicted for Facilitating Millions of Scam Robocalls to Americans* available at: <https://oig.ssa.gov/audits-and-investigations/investigations/nov17-ga-india-based-voip-provider-fraud-scam-robocalls> (November 17, 2020).

<sup>29</sup> *That’s Not the Government Calling: Protecting Seniors from the Social Security Impersonation Scam: Hearing Before the Special Committee on Aging*, U.S. Senate, 116<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2020) (Statement of Gail S. Ennis, Inspector General, Social Security Administration) (<https://oig.ssa.gov/newsroom/congressional-testimony/thats-not-government-calling-protecting-seniors-social-security>).

retirement accounts or liquidating stock—that increase their MAGI for the year in question. The higher reported income appearing on the victim’s tax return can result in an IRMAA assessment or IRMAA increase two years later.

Our existing regulations:

Under our current regulations, a significant reduction in income due to a loss of income-producing property – including a loss due to criminal fraud or theft – can qualify as an LCE.<sup>30</sup> All beneficiaries who seek to qualify for an LCE based on a loss of income-producing property must provide evidence documenting the loss, such as an insurance claim.<sup>31</sup>

The current regulations require victims of criminal fraud or theft who have lost income-producing property to submit proof that a court has convicted the perpetrator of a crime.<sup>32</sup> While this requirement is necessary to safeguard against unfounded or unproven allegations, convictions may be more difficult to obtain in these types of fraud cases. Perpetrators of these increasingly prevalent fraud schemes are employing new technological means, and, as noted above, are seeking new forms of payment which make them difficult to identify and convict. As Calvin A. Shivers, the Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation noted in his June 2020 testimony before the U.S. Senate Judiciary Committee:

With the rise in the use of virtual assets and encrypted devices and applications, the interconnectivity of communication platforms and the ever-changing landscape of emerging payment systems, the world is more connected today than ever. This also means it has become increasingly difficult to track illicit finance flows and identify the criminal actors behind them.<sup>33</sup>

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<sup>30</sup> See 20 CFR 418.1205(e) and 418.2205

<sup>31</sup> See 20 CFR 418.1255(e) and 418.2255

<sup>32</sup> Id.

<sup>33</sup> *COVID-19 Fraud: Law Enforcement’s Response to Those Exploiting the Pandemic* U.S. Senate Judiciary Committee (Statement of Calvin A. Shivers, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation June 9, 2020) available at: <https://www.fbi.gov/news/testimony/covid-19-fraud-law-enforcements-response-to-those-exploiting-the-pandemic>.



Consequently, we are exploring whether and how we might change the evidentiary standard in our regulations for showing a loss of income-producing property due to criminal fraud or theft by a third party.

What is the purpose of this ANPRM?

We are seeking information on whether and how we should update our regulations to provide for relief in cases where beneficiaries are victims of criminal fraud or theft and their incomes are affected, but no criminal convictions (or arrest) may have taken place.

We seek to aid beneficiaries adversely affected by fraud that has affected their IRMAA status, while maintaining our commitment to safeguard the public funds in our trust. Our current regulations safeguard against unfounded or unproven allegations by requiring evidence of fraud or loss, but may not address all situations. We are seeking input from the public to more fully understand the new forms of fraudulent activity affecting beneficiaries, to better understand the types of evidence of fraudulent activities such victims can present, to learn more about the types of financial transactions beneficiaries have engaged in as a result of fraud, and to determine how we might revise our rules to better assist victim-beneficiaries.

What we will consider when we decide whether to propose revisions to our rules:

We will consider the public comments and any research or data identified in response to this solicitation. We will also consider any information we obtain through research or other activities intended to inform our policy decisions in this area.

What should the public comment about?

We are specifically asking the public to provide us with comments on the following topics related to this ANPRM:

- *Types of fraud that can affect IRMAA status* – We seek to learn more about the types of scams the public is experiencing, including how

affected persons were contacted; what was the technique employed by the scammer; what kinds of property were targeted; what kinds of financial transactions did affected persons engage in as a result of the fraud; whether affected persons experienced an increase in taxable income as a result; how much of a monetary loss if any did affected persons sustain; were there any arrests or convictions; what was the experience with law enforcement; etc.). As noted above, *please be certain not to include any personally identifiable information in your comments*;

- *Types of evidence* – What types of evidence should we seek from affected beneficiaries to demonstrate that the loss was due to criminal fraud or theft? How can we best balance evidentiary needs with the burden evidence requirements impose on affected beneficiaries? We are seeking information about forms of convincing evidence that would be common among such victims.

How should we determine whether a loss of income-producing property due to alleged criminal fraud or theft is “a result of the ordinary risk of investment,” and thus may not be considered under existing regulations [20 CFR 418.1205(e).]

#### Consideration of and Response to Public Comments

We will consider all relevant public comment we receive in response to this ANPRM. If we decide to propose specific revisions to our rules, we will publish a notice of proposed rulemaking in the *Federal Register*, and you will have a chance to comment on any revisions we propose.

#### List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Medicare subsidies, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for the Social Security Administration, for purposes of publication in the Federal Register.

Faye I. Lipsky,  
Federal Register Liaison,  
Office of Legislative and Congressional Affairs,  
Social Security Administration.

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